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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

IMPERIAL COUNTY DEPARTMENT OF SOCIAL SERVICES, Petitioner, v. THE SUPERIOR COURT OF IMPERIAL COUNTY, Respondent;	D050602 (Imperial County Super. Ct. Nos. JJP01423, JJP01424, JJP01425, JCF19315)
EDGAR F. et al., Real Parties in Interest.	

Proceedings in mandate after superior court set dependency and criminal cases for joint hearing. Juan Ulloa, Judge. Petition granted.

FACTUAL AND PROCEDURAL BACKGROUND

On July 12, 2006, Imperial County Department of Social Services (Department) filed juvenile dependency petitions on behalf of 20-month-old Edgar and his two older

siblings. The Department alleged the children suffered, or were at a substantial risk of suffering, serious physical harm (Welf. & Inst. Code,[1] § 300, subd. (a)) based on a report from a medical professional that Edgar had a cigarette burn on his chest that was not necessarily consistent with the explanation given by his mother (Lorena). The Department also alleged failure to protect (§300, subd. (b)) based on Lorena's admissions to the social worker that (1) Edgar came into contact with her lighted cigarette, (2) Lorena had been using methamphetamine on a regular basis from the time Edgar was born, (3) Lorena had begun smoking the drug the past few months, and the smoking caused her to become seriously addicted and affected her ability to supervise and protect the children, and (4) Edgar had not received any of his immunizations. The petition also alleged the children were suffering, or were at a substantial risk of suffering, serious emotional damage (§300, subd. (c)).

The juvenile court (Judge Lehman) ordered the minors detained in the temporary care and custody of the Department. On July 31, 2006, Lorena admitted the failure to immunize and use of methamphetamine allegations of the petition, and Judge Lehman dismissed the remaining allegations. At the disposition hearing, Judge Lehman declared the minors dependents, removed them from Lorena's custody, and ordered reunification services for Lorena. At the six-month review hearing, the juvenile court commissioner

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1 Unless otherwise specified, all statutory references are to the Welfare and Institutions Code.

continued reunification services another six months and set a 12-month review in July 2007.

Meanwhile, the district attorney filed criminal charges against Lorena. On February 21, 2007, Lorena entered a no contest plea to corporal injury to a child, and the criminal court (Judge Ulloa[2]) dismissed the remaining count and set the matter for sentencing. At the sentencing hearing, after being advised of the upcoming dependency review in July, Judge Ulloa ordered a joint hearing of the criminal and juvenile proceedings on April 6 in Department 2 (a criminal court), calendared the juvenile case for the same date, and directed the clerk to have the Department, county counsel, Lorena's dependency attorney and minors' counsel appear.

The Department moved for reconsideration of the order setting the joint hearing. Judge Ulloa denied the motion, explaining:

> "[The Probation Department] ha[s] a duty to recommend a sentence to the Court. [It] made a recommendation. I would think that it's pretty obvious to everyone that [it] ignored whatever the mother has done in the dependency proceeding. I would expect that the agencies, and the parties, and their attorneys would be able to come up with a joint order, a family reunification plan that includes the conditions of probation, a probation recommendation, and a plan that includes the conditions of the family reunification plan, so that the Court can make an order in both cases that should be enforced. These children deserve that much from you."

The Department followed with this petition. The Department argues a superior court judge conducting criminal proceedings does not have jurisdiction to hear

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2 Although he is the presiding judge of the juvenile court, Judge Ulloa is currently sitting as a criminal court judge.

dependency proceedings and may not calendar both proceedings at the same session. We stayed the joint hearing, ordered real parties to file a response to the petition, and invited a response from superior court. Real parties responded agreeing with the Department. We issued *Palma* notice. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

DISCUSSION

Juvenile hearings are unique by statute and rule. Section 345 requires juvenile proceedings to be heard at a "special or separate session of the court" at which "no other matter shall be heard." Rule 5.530(a) of the California Rules of Court[3] imposes the same separate session and singularity requirements. Only a limited number of individuals are entitled to attend the proceedings. (Rule 5.530(b).) Absent a request by a parent or guardian, or consent by the minor, the public may not be admitted. (§ 346; rule 5.530(e)(1).)

Juvenile proceedings serve a purpose fundamentally distinct from criminal proceedings and are exempt from the constitutional constraints that apply in criminal cases. Dependency is civil in nature and focuses on protection of the child, not guilt of the criminal defendant. (*In re Carmen O.* (1994) 28 Cal.App.4th 908, 922, fn. 7.)

> "Criminal defendants and parents are *not* similarly situated. By definition, criminal defendants face punishment. Parents do not. [Citation.] Criminal defendants, as such, are expressly given protections in the United States Constitution itself. [Citation.] Parents are not." (*In re Sade C.* (1996) 13 Cal.4th 952, 991.)

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3 Unless otherwise specified, all rule references are to the California Rules of Court.

Thus, the Sixth Amendment right to confrontation does not extend to parents in a juvenile dependency proceeding. (*In re April C.* (2005) 131 Cal.App.4th 599, 602.) Parents in a dependency proceeding cannot assert the Fourth Amendment exclusionary rule because "the potential harm to . . . children in allowing them to remain in an unhealthy environment outweighs any deterrent effect which would result from suppressing evidence" unlawfully seized. (*In re Christopher B.* (1978) 82 Cal.App.3d 608, 615; see also *In re Robert P.* (1976) 61 Cal.App.3d 310, 321.) Indeed, if the constitutional guarantees that control in criminal cases were extended to dependency cases where the best interest of the child — not the guilt or innocence of the parent — is the goal, *Miranda* warnings (*Miranda v. Arizona* (1966) 384 U.S. 436) would be required before a parent ever talks with a social worker.

Criminal proceedings also give rise to constitutional and statutory rights to a public trial. (U.S. Const., 6th Amend.; Cal. Const., art. I, §§ 15, 29; Pen. Code, §686, subd. (1); *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555; *Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596; *Press-Enterprise Co. v. Superior Court* (1984) 464 U.S. 501; *Press-Enterprise Co. v. Superior Court* (1986) 478 U.S. 1.) A juvenile hearing is, by contrast, a "private affair" — historically closed to the public and still closed by statute today. (*San Bernardino County Dept. of Public Social Services v. Superior Court* (1991) 232 Cal.App.3d 188, 197-199; § 346.)

Hearing the juvenile and criminal cases jointly is anathema to statute and rule. It also marginalizes the fundamental distinctions between the two proceedings. While we are sensitive to the court's concern that the sentence be appropriate to the reunification plan, any dovetailing or expediency that may be accomplished by merging the dependency and criminal

cases is overshadowed by the blurring of principles that apply, and potential for mischief, in the hybrid proceeding.

Because the matter is urgent requiring acceleration and real parties concede the entitlement to relief, a peremptory writ in the first instance is proper. (Code of Civ. Proc., § 1088; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223, disapproved on another ground in *Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 724, fn. 4; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.)

DISPOSITION

Let a writ issue directing the superior court to vacate its orders of March 21, 2007, and April 3, 2007, setting the joint hearing and denying reconsideration. The stay issued by this court on April 5, 2007 is vacated. No costs are awarded. The opinion will be final immediately as to this court. (Rule 8.264(b)(3).)

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.